

MONTANA LEGISLATIVE HISTORY

Chapter Did Not Pass 1971

Bill H 451 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) 2/5 c

Killed c

_____ c

_____ c

Date Out _____ c

S. Committee on _____

Hearing Date(s) _____ c

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Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

House
JUDICIARY COMMITTEE

42nd Legislative Assembly

Bill No.	Subject Matter	Date In	Bearing Date	Comments	Date Out	Committee Action	Final Action
HB 425	To codify the law with regard to medical liability based on negligence	1/22/71	2/2/71		2/2/71	DO NOT PASS	KILLED
HB 435	Provides that contributory negligence shall not be a bar to recovery of damages	1/22/71	2/5/71		2/6/71	DO NOT PASS	KILLED
HB 436	Provides for jury trial upon questions of fact of disability, etc.	1/22/71	2/5/71		2/6/71	DO NOT PASS	KILLED
HB 437	Amends section providing for peremptory challenges	1/22/71	2/3/71		2/3/71	DO PASS	GOVERNOR
HB 447	Amends section relating to filing of liens on motor vehicle	1/22/71	2/3/71		2/3/71	DO PASS	KILLED
HB 451	Provides for personal and property protection motor vehicle ins. etc.,	1/22/71	2/5/71		2/5/71	DO NOT PASS	KILLED

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House BILL NO. 457

INTRODUCED BY FAGG (BY REQUEST)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PERSONAL AND PROPERTY PROTECTION MOTOR VEHICLE INSURANCE WITH BENEFITS PAYABLE WITHOUT REGARD TO FAULT; REPEALING ALL ACTS AND PARTS OF ACTS INCONSISTENT HEREWITH; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Purpose. This act provides a means of promptly and equitably compensating persons for accidental bodily injury and property damage arising from the ownership, operation, maintenance or use of motor vehicles, in lieu of tort liability.

Section 2. Registration of vehicles and security for payment of benefits.

(1) Security required for registered motor vehicles.

(a) Continuous security. The owner or registrant of a motor vehicle required to be registered in this state shall maintain security as defined by subsection 2(2) in effect continuously throughout the registration period.

(b) Benefits to be secured. Security is required for payment of benefits under personal protection insurance, property protection insurance and residual liability insurance as they are set forth in this chapter.

(c) Motor vehicle. A motor vehicle for purposes of this chapter is any vehicle, including any trailer,

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1 operated or designed for operation upon a public highway
2 by any power other than muscular power.

3 (2) Security. (a) Insurance. Security for the
4 payment of the benefits required by subsection 2(1) may
5 be provided with respect to any motor vehicle under a
6 policy issued by an insurer duly authorized to transact
7 business in this state which affords insurance for the
8 payment of such benefits. Any policy of insurance
9 represented or sold as providing the security required
10 for registered motor vehicles under this chapter shall
11 be deemed to provide insurance for the payment of such
12 benefits.

13 (b) Other security. Security for the payment of
14 such benefits may be provided with respect to any motor
15 vehicle by any other method approved by the Montana
16 highway patrol board as affording security equivalent
17 to that afforded by a policy of insurance, provided proof
18 of such security is filed and continuously maintained
19 with the Montana highway patrol board throughout the
20 registration period. The person filing such security
21 shall have all of the obligations and rights of an
22 insurer under this chapter. Whenever the context
23 permits, the word "insurer", as used in this chapter,
24 includes any such person.

25 (3) Security by nonresidents. A nonresident owner
26 or registrant of a motor vehicle not registered in this
27 state shall not operate or permit such vehicle to be
28 operated in this state for an aggregate of more than
29 thirty (30) days in any calendar year unless he
30 continuously maintains security for the payment of

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1 benefits in accordance with the terms of subsection 2(1).

2 (4) Illegal operation of a motor vehicle. Any
3 owner or registrant of a motor vehicle with respect
4 to which security is required under subsection 2(1),
5 who operates such motor vehicle or permits it to be
6 operated upon a public highway in this state without
7 having in full force and effect security complying with
8 the terms of subsections 2(2) or 2(3) is guilty of a
9 misdemeanor. Any other person who operates such a motor
10 vehicle upon a public highway in this state with the
11 knowledge that the owner or registrant does not have
12 such security in full force and effect is guilty of
13 a misdemeanor. Each person convicted of a misdemeanor
14 under the terms of this section shall have his license
15 and, if an owner or registrant, his registration revoked
16 and may be fined not less than one hundred dollars
17 (\$100) nor more than five hundred dollars (\$500) or may
18 be imprisoned for not more than one (1) year or both.

19 Section 3. Terms and conditions of personal
20 protection insurance.

21 (1) Liability for personal protection insurance
22 benefits. (a) Basis for payment. Under personal
23 protection insurance the insurer is liable to pay
24 benefits for accidental bodily injury arising out of the
25 ownership, operation, maintenance or use of a motor
26 vehicle as a motor vehicle, subject to the provisions of
27 this chapter.

28 (b) No fault. Personal protection insurance
29 benefits are due under the provisions of this chapter
30 without regard to fault.

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1 (c) Accidental bodily injury.

2 (i) Bodily injury. Bodily injury includes death
3 resulting therefrom and damage to or loss of a person's
4 prosthetic devices in connection with such injury.

5 (ii) Accidental bodily injury. Bodily injury is
6 accidental as to one claiming personal protection
7 insurance benefits unless suffered intentionally by the
8 injured person or caused intentionally by the claimant.
9 Even though a person knows that bodily injury is
10 substantially certain to be caused by his act or omission,
11 he does not cause or suffer injury intentionally if he
12 acts or refrains from acting for the purpose of averting
13 injury to property or to any person or persons including
14 himself.

15 (d) Parked vehicles. Accidental bodily injury does
16 not arise out of the ownership, operation, maintenance
17 or use of a parked vehicle as a motor vehicle unless

18 (i) the vehicle was parked in such a way as to
19 cause unreasonable risk of the bodily injury which
20 occurred, or

21 (ii) such injury was a direct result of physical
22 contact with; equipment permanently mounted on such
23 vehicle, while such equipment was being operated or used
24 or; property being lifted onto or lowered from such
25 vehicle in the loading or unloading process, or

26 (iii) such injury was sustained by a person while
27 occupying, entering into or alighting from such vehicle.

28 (2) Personal protection insurance benefits. (a)
29 Elements. Personal protection insurance benefits are
30 payable for the following:

T-kr

1 (i) Allowable expenses. Allowable expenses consist
2 of all reasonable charges incurred for reasonably
3 necessary products, services and accommodations for an
4 injured person's care, recovery or rehabilitation.
5 Allowable expenses within personal protection insurance
6 coverage shall not include; charges for a hospital room
7 in excess of a reasonable and customary charge for semi-
8 private accommodations except when the injured person
9 requires special or intensive care or; charges for
10 funeral and burial expenses to the extent that the total
11 exceeds one thousand dollars (\$1,000).

12 (ii) Work loss. Work loss consists of; loss of
13 income from work an injured person would have performed
14 had he not been injured, including loss of pension and
15 social security benefit entitlements, and; expenses
16 reasonably incurred in obtaining ordinary and necessary
17 services in lieu of those that, had he not been injured,
18 an injured person would have performed, not for income
19 but for the benefit of himself or of any dependent of
20 his; provided, however, that work loss does not include
21 any loss after the date on which the injured person dies.

22 Because the benefits received from personal protection
23 insurance for loss of income are not taxable income, the
24 benefits payable for such loss of income will be reduced
25 fifteen percent (15%) unless the claimant presents to
26 the insurer in support of his claim reasonable proof of
27 a lower value of the income tax advantage in his case,
28 in which event such lower value shall apply.

29 The benefits payable for work loss sustained in any
30 one thirty (30) day period and the income earned by an

T-kr

1 injured person for work during the same period shall
2 together not exceed seven hundred fifty dollars (\$750),
3 such maximum to apply pro rata to any lesser period of
4 work loss.

5 (iii) Survivors' loss. Survivors' loss consists of
6 loss, after the date on which the deceased died, of
7 contributions of tangible things of economic value (not
8 including services) that persons who are dependents of
9 the deceased at the time of his death would have received
10 for support during their dependency from the deceased
11 had he not suffered the accidental bodily injury causing
12 death and; expenses reasonably incurred by such
13 dependents during their dependency and after the date on
14 which the deceased died in obtaining ordinary and
15 necessary services in lieu of those that the deceased
16 would have performed for their benefit had he not
17 suffered the injury causing death. The benefits payable
18 for survivors' loss in connection with the death of any
19 person in any one thirty (30) day period shall not exceed
20 seven hundred fifty dollars (\$750) and shall not be
21 payable beyond the normal life expectancy of the deceased,
22 as determined by reference to the mortality tables
23 designated by the commissioner of insurance for this
24 purpose.

25 (b) Social security benefits. The amount of all
26 disability and survivor benefits a claimant recovers or
27 is entitled to recover under the Social Security Act
28 (U.S. Code, Title 42, sections 301 et seq.) because of
29 accidental bodily injury shall be subtracted from the
30 personal protection insurance benefits otherwise payable

T-kr

for the injury.

(c) Injured person. An injured person is a natural person suffering accidental bodily injury.

(d) Dependents. The following described persons shall be conclusively presumed to be dependents of a deceased person: 1. a wife is dependent on a husband with whom she lives at the time of his death; 2. a husband is dependent on a wife with whom he lives at the time of her death; 3. any child while under the age of eighteen (18) years, or over said age but physically or mentally incapacitated from earning, is dependent on the parent with whom he is living or from whom he is receiving support regularly at the time of the death of such parent. In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts, as the facts may be at the time of the death.

The dependency of a surviving spouse shall terminate upon death or remarriage. The dependency of any other person shall terminate upon the death of such person and shall continue only so long as such person is; under the age of eighteen (18) years or; physically or mentally incapacitated from earning or; engaged full time in a formal program of academic or vocational education or training.

(e) Accrual of personal protection insurance benefits. Personal protection insurance benefits payable for accidental bodily injury accrue not when the injury occurs but rather as the allowable expense, work loss or survivors' loss is incurred.

T-kr

1 (3) Out of state injuries. Personal protection
2 insurance benefits are payable for accidental bodily
3 injury suffered in an accident occurring out of this
4 state, if the accident occurs within the United States,
5 its territories and possessions or in Canada, and the
6 person whose injury is the basis of the claim was at
7 the time of the accident; a named insured under a
8 personal protection insurance policy; his spouse; a
9 relative of either domiciled in the same household or;
10 an occupant of a vehicle involved in the accident whose
11 owner or registrant was insured under a personal
12 protection insurance policy or has provided security
13 approved by the Montana highway patrol board under
14 subsection 2(2)(b).

15 (4) Payment of personal protection insurance
16 benefits. Personal protection insurance benefits are
17 payable to or for the benefit of the injured person or,
18 in the event of his death, to or for the benefit of his
19 dependents. If an insurer in good faith pays the
20 personal protection insurance benefits required by this
21 act to or for the benefit of a person who it believes
22 is entitled to such benefits, such payment shall discharge
23 the insurer's liability to the extent of such payments
24 unless the insurer has been notified in writing of the
25 claim of some other person. If there is doubt about the
26 proper person to receive such benefits or the proper
27 apportionment among the persons entitled thereto, the
28 insurer, the claimant or any other interested person
29 may apply to the court for an appropriate order. The
30 court shall have all power necessary to designate the

T-kr

1 payees and to make an equitable apportionment, taking
2 into account the relationship of the payees to the
3 injured person and such other factors as the court
4 considers appropriate. In the absence of a court order
5 directing otherwise the insurer may pay

6 (a) to the dependent of the injured person, the
7 personal protection insurance benefits accrued prior to
8 his death without the appointment of an administrator
9 or executor,

10 (b) to the surviving spouse, the personal
11 protection insurance benefits due any dependent children
12 living with such spouse.

13 (5) Persons not entitled to personal protection
14 insurance benefits. A person is not entitled to be
15 paid personal protection insurance benefits for
16 accidental bodily injury if at the time of the accident,

17 (a) such person was using a motor vehicle which
18 he had taken unlawfully, unless he reasonably believed
19 that he was entitled to take and use the vehicle, or

20 (b) such person was the owner or registrant of a
21 motor vehicle involved in the accident with respect
22 to which the security required by subsection 2(2) was
23 not in effect, or

24 (c) such person was not a resident of this state,
25 and was an occupant of a motor vehicle not registered
26 in this state, and was not insured by an insurer which
27 has filed a certification in compliance with section
28 9(4).

29 (6) Policies applicable to an accident. (a)
30 Family coverage primary. Except as provided in

T-kr

1 paragraphs (b) and (c) of this subsection, each personal
2 protection insurance policy shall apply to accidental
3 bodily injury to the person named in such policy, his
4 spouse, and any relative of either domiciled in the
5 same household. When personal protection insurance
6 benefits are payable to or for the benefit of an injured
7 person under his own policy and would also be payable
8 under the policy of his spouse, relative or relative's
9 spouse, the injured person's insurer shall pay all of the
10 benefits and shall not be entitled to recoupment from
11 the other insurer.

12 (b) Public passenger vehicle. Any person suffering
13 accidental bodily injury while an operator or a passenger
14 of a motor vehicle operated in the business of trans-
15 porting passengers shall receive the personal protection
16 insurance benefits to which he is entitled from the
17 insurer of such motor vehicle.

18 (c) Vehicles furnished by employers. Any employee,
19 his spouse or any relative of either domiciled in the
20 same household who suffers accidental bodily injury
21 while an occupant of a motor vehicle owned or registered
22 by the employer of such employee shall receive personal
23 protection insurance benefits to which he is entitled
24 from the insurer of the furnished vehicle.

25 (d) Vehicle occupants not otherwise covered.
26 Except as provided in paragraphs (a) through (c) of
27 this subsection, any person suffering accidental bodily
28 injury while an occupant of a motor vehicle shall claim
29 personal protection insurance benefits from insurers in
30 the following order of priority: 1. the insurer of

T-kr

1 the owner or registrant of the vehicle occupied. 2.

2 the insurer of the operator of the vehicle occupied.

3 (e) Persons not occupying any vehicle.

4 (i) Claims. Except as provided in paragraph (a)

5 of this subsection, any person suffering accidental
6 bodily injury while not an occupant of a motor vehicle
7 shall claim personal protection insurance benefits from
8 insurers in the following order of priority: 1. insurers
9 of owners or registrants of motor vehicles involved in the
10 accident. 2. insurers of operators of motor vehicles
11 involved in the accident.

12 (2) Distribution of loss. When two or more
13 insurers are in the same order of priority to provide
14 personal protection insurance benefits any insurer
15 paying benefits due is entitled to partial recoupment
16 from the other insurer or insurers in the same order
17 of priority, together with a reasonable amount of
18 partial recoupment of the expense of processing the
19 claim, in order to accomplish equitable distribution
20 of the loss among such insurers.

21 (f) Determination of personal protection insurance
22 benefits per person. Any limitation upon the amount
23 of personal protection insurance benefits available
24 because of accidental bodily injury to one person
25 arising from one motor vehicle accident shall be
26 determined without regard to the number of policies
27 applicable to the accident.

28 (7) Insurer's rights of reimbursement and indemnity.

29 (a) Net tort claim recovery. No subtraction from
30 personal protection insurance benefits will be made

T-kr

1 because of the value of a claim in tort based on the
2 same accidental bodily injury, but after recovery is
3 realized upon such a tort claim, a subtraction will be
4 made to the extent of the recovery, exclusive of
5 reasonable attorneys' fees and other reasonable expenses
6 incurred in effecting the recovery. If personal protec-
7 tion insurance benefits have already been received, the
8 claimant shall repay to the insurer or insurers out
9 of the recovery a sum equal to the benefits received,
10 but not more than the recovery exclusive of reasonable
11 attorneys' fees and other reasonable expenses incurred
12 in effecting the recovery. The insurer or insurers shall
13 have a lien on the recovery to this extent. No recovery
14 by an injured person or his estate for loss suffered
15 by him will be subtracted in calculating benefits due
16 a dependent after the death, and no recovery by a
17 dependent for loss suffered by the dependent after the
18 death will be subtracted in calculating benefits due the
19 injured person.

20 (b) Indemnity from one paying in tort without
21 regard for rights of insurer having reimbursement
22 interest. A personal protection insurer with a right
23 of reimbursement under paragraph (a) of this subsection,
24 if suffering loss from inability to collect such
25 reimbursement out of a payment received by a claimant
26 upon a tort claim is entitled to indemnity from one who,
27 with notice of the insurer's interest, made such a
28 payment to the claimant without making the claimant
29 and the insurer joint payees as their interests may
30 appear, or without obtaining the insurer's consent to

T-kr

1 a different method of payment.

2 (c) Accidents involving commercial vehicles.

3 (i) Any insurer, other than the insurer of a
4 motor vehicle operated in the business of transporting
5 passengers, which pays personal protection insurance
6 benefits with respect to any person suffering accidental
7 bodily injury in an accident involving a vehicle designed
8 or primarily used to transport property or equipment
9 over a public highway shall have a right of reimburse-
10 ment from the personal protection insurer of such
11 vehicle; provided that the total reimbursement obligation
12 of the insurer of such vehicle shall not exceed one
13 million dollars (\$1,000,000) with respect to all
14 accidental bodily injury resulting from such accident.

15 When two (2) or more personal protection insurers have
16 an obligation to make reimbursements under this paragraph
17 with respect to the same accident, they shall share
18 the obligation equally, but the limitation of the total
19 reimbursement obligation stated above applies separately
20 to each.

21 (ii) For purposes of this paragraph, a vehicle shall
22 be considered to be involved in an accident only if
23 there is physical contact of such vehicle with the person
24 injured or the vehicle which he is occupying, or with
25 another vehicle or object involved in the accident or,
26 the operator of such vehicle is convicted of a traffic
27 violation which contributed to the accident.

28 (8) Primary and collateral sources of indemnity.

29 (a) Statutory sources. The personal protection insurer
30 shall have the primary obligation to indemnify for the

T-kr

1 elements of loss as defined in subsection 3(2)(a) ¶
2 because of accidental bodily injury arising out of the
3 ownership, operation, maintenance or use of a motor
4 vehicle as a motor vehicle. Payment by such insurer of
5 personal protection insurance benefits with respect
6 to such injury shall operate to discharge, to the
7 extent of such payment, the obligations of any person,
8 organization, insurer or governmental agency to indemnify
9 against such loss under any workmen's compensation,
10 unemployment compensation or disability benefits law or
11 any similar law. In the event the personal protection
12 insurer fails to pay any of such benefits due under this
13 chapter with respect to such injury, then the person,
14 organization, insurer or governmental agency shall have,
15 with respect to any payment it may be obligated to make,
16 a lien upon the obligation of the personal protection
17 insurer, by giving prior written notice of its intention
18 to make payment for such injury.

19 (b) Other collateral sources. Any person, organ-
20 ization or insurer may include in any contract or benefit
21 plan which it offers or sells, a provision excluding
22 benefits for accidental bodily injury which are payable
23 under personal protection insurance.

24 Section 4. Terms and conditions of property
25 protection insurance.

26 (1) Liability for property protection insurance
27 benefits. (a) Basis for payment. Under property
28 protection insurance the insurer is liable to pay
29 benefits for accidental damage to tangible property
30 arising out of the ownership, operation, maintenance

T-kr

1 or use of a motor vehicle as a motor vehicle subject to
2 the provisions of this section.

3 (b) No fault. Property protection insurance
4 benefits are due under the conditions stated in this
5 chapter without regard to fault.

6 (2) Definitions. (a) Accidental damage to
7 tangible property.

8 (i) Damage to tangible property. Damage to
9 tangible property consists of physical injury to or
10 destruction of such property and loss of use of such
11 property so injured or destroyed.

12 (ii) Accidental damage to tangible property.
13 Damage to tangible property is accidental, as to one
14 claiming property protection insurance benefits, unless
15 it is suffered or caused intentionally by the claimant.
16 Even though a person knows that damage to tangible
17 property is substantially certain to be caused by his
18 act or omission, he does not cause or suffer such damage
19 intentionally if he acts or refrains from acting for
20 the purpose of averting injury to any person or persons,
21 including himself, or for the purpose of averting
22 damage to tangible property.

23 (b) Property protection insurance benefits.
24 Property protection insurance benefits consist of the
25 lesser of reasonable repair costs or replacement costs
26 less depreciation and, where applicable, the value of
27 loss of use, provided however, that the property
28 protection insurance benefits paid under one policy for
29 damage to all tangible property arising from one
30 accident shall not exceed one million dollars

T-kr

1 (\$1,000,000).

2 (3) Exclusions. (a) Property. Damage to the
3 following kinds of property is excluded from property
4 protection insurance benefits:

5 (i) Motor vehicles and their contents;
6 (ii) property owned by a person named in a property
7 protection insurance policy, his spouse or a relative of
8 either domiciled in the same household, if the person
9 named, his spouse or such relative was the owner,
10 registrant or operator of a vehicle involved in the
11 motor vehicle accident out of which the property damage
12 arose.

13 (b) Out of state accidents. Property protection
14 insurance benefits are not payable for property damage
15 arising from motor vehicle accidents occurring out of
16 this state.

17 (4) Property protection claims. Persons suffering
18 accidental property damage shall claim property
19 protection insurance benefits from insurers in the
20 following order of priority: (a) insurers of owners
21 or registrants of vehicles designed and primarily used
22 to transport property or equipment over a public highway,
23 which are involved in the accident out of which the
24 property damage arose; (b) insurers of owners or
25 registrants of other type vehicles involved in the
26 accident; (c) insurers of operators of other type
27 vehicles involved in the accident.

28 (5) Distribution, reimbursement and indemnity.

29 The provisions for distribution of loss and for
30 reimbursement and indemnification among personal

T-kr

1 protection insurers as set forth in subsections
2 3(6)(e)(2) and 3(7)(a) and (b) also apply to property
3 protection insurers.

4 Section 5. Terms and conditions of residual
5 liability insurance.

6 (1) Residual liability insurance. Residual
7 liability insurance shall cover bodily injury and
8 property damage which occurs outside this state and
9 within the United States, its territories and possessions
10 or in Canada. Such insurance shall afford coverage
11 equivalent to that required as evidence of automobile
12 liability insurance under the financial responsibility
13 laws of the place in which the injury or damage occurs.

14 Section 6. Tort exemption.

15 (1) Exemption precludes tort liability. Whenever
16 accidental bodily injury or accidental damage to tangible
17 property arises out of the ownership, operation,
18 maintenance or use of a motor vehicle as a motor vehicle,
19 an owner, registrant, operator or occupant of a motor
20 vehicle involved in the accident and persons or
21 organizations legally responsible for his acts or
22 omissions are exempt from tort liability for the bodily
23 injury or property damage, provided that an owner,
24 registrant, operator or occupant shall not be so exempt
25 if he is excluded under subsection 3(5) from personal
26 protection insurance benefits for accidental bodily
27 injury arising from the same motor vehicle accident.
28 This exemption shall apply wherever the law of this state
29 is controlling in determining tort liability.

30 Section 7. Claims.

T-kr

1 (1) Duty to give notice of accident. An insurer
2 may require written notice to be given as soon as
3 practicable after an accident involving a motor vehicle
4 with respect to which the policy affords the security
5 required by this chapter.

6 (2) Personal protection insurance benefits payable
7 periodically. (a) When payable. Personal protection
8 insurance benefits are payable as loss accrues.

9 (b) When overdue. Personal protection insurance
10 benefits are overdue if not paid within thirty (30)
11 days after the insurer receives reasonable proof of the
12 fact and of the amount of loss sustained. If reasonable
13 proof is not supplied as to the entire claim, the amount
14 supported by reasonable proof is overdue if not paid
15 within (30) days after such proof is received by the
16 insurer. Any part or all of the remainder of the claim
17 that is later supported by reasonable proof is overdue
18 if not paid within thirty (30) days after such proof
19 is received by the insurer. For the purpose of
20 calculating the extent to which any benefits are overdue,
21 payment shall be treated as made on the date a draft
22 or other valid instrument was placed in the United States
23 mail in a properly addressed, postpaid envelope, or, if
24 not so posted, on the date of delivery.

25 (c) Interest on overdue payments. All overdue
26 payments bear simple interest at the rate of six percent
27 (6%) per annum.

28 (3) Benefits not assignable. An agreement for
29 assignment of any rights to benefits payable in the
30 future is unenforceable.

T-kr

1 (4) Lump sum settlements. Rights and obligations
2 arising under personal protection insurance, either
3 with respect to a claim for a limited period of time or
4 with respect to all future loss arising from an
5 accidental bodily injury, may be discharged by; lump sum
6 settlement for an amount not exceeding one thousand
7 dollars (\$1,000) or; settlement for a larger lump sum
8 with judicial approval upon a finding that the settlement
9 will contribute substantially to the welfare or
10 rehabilitation of the injured person or his dependents.

11 (5) Limitation of actions. (a) Personal
12 protection insurance. No action for the recovery of
13 personal protection insurance benefits payable under
14 this act for accidental bodily injury may be commenced
15 later than one (1) year after the date of the accident
16 causing such injury unless written notice of injury
17 as provided herein has been given to the insurer
18 within one (1) year after the accident or unless the
19 insurer has previously made a payment of personal
20 protection insurance benefits for such injury. If
21 such a notice has been given or such a payment has been
22 made, the action may be commenced at any time within
23 a period of one (1) year after the most recent allowable
24 expense, work loss or survivor's loss has been incurred;
25 provided, however, that the claimant may not recover
26 benefits for any portion of the loss incurred more than
27 one (1) year prior to the date on which the action
28 was commenced. The notice of injury required by this
29 paragraph may be given to the insurer or any of its
30 authorized agents by any person claiming to be entitled

T-kr

1 to benefits therefor, or by someone in his behalf. The
2 notice shall give the name and address of the claimant
3 and indicate in ordinary language the name of the person
4 injured and the time, place and nature of his injury.

5 (b) Property protection insurance. No action for
6 the recovery of property protection insurance benefits
7 shall be commenced later than one (1) year after the
8 accident.

9 (c) Insurer's rights of reimbursement and indemnity.
10 No action by an insurer to enforce its rights of recovery
11 or indemnity under subsection 3(7) may be commenced later
12 than one (1) year after the payment has been received by
13 a claimant upon a tort claim with respect to which the
14 insurer has a right of reimbursement or recovery under
15 paragraph 3(7)(a) or (b), or, the payment has been made by
16 the insurer with respect to which the insurer has a right
17 of reimbursement under paragraph 3(7)(c).

18 (6) Periods as to which judgments are binding;
19 limitation of actions for new judgments. (a) Judgment
20 for future benefits if reasonably certain determination
21 can be made. Upon trial of an action for personal
22 protection insurance benefits, or upon retrial pursuant
23 to an application filed under the terms of this section,
24 judgment shall be entered as to all benefits to come due
25 thereafter during such periods as to which the court
26 finds that a reasonably certain determination of
27 future loss can be made in the light of the
28 evidence.

29 (b) Judgment for personal protection insurance
30 benefits due more than five (5) years after judgment;

T-kr

1 application for new trial. A judgment awarding personal
2 protection insurance benefits to come due more than
3 five (5) years after the date of the judgment may be
4 set aside upon application of an interested party
5 presented for hearing not sooner than five (5) years
6 after the date of the judgment. Upon such application,
7 the only issue to be tried is the amount of any unpaid
8 benefits coming due not less than five (5) years after
9 the date of the judgment and not more than one (1) year
10 before the date of the application, and that issue shall
11 be the subject of a new trial.

12 (7) Attorney's fees. (a) Claimant's attorney.
13 An attorney is entitled to a reasonable fee for
14 advising and representing a claimant in an action for
15 personal or property protection insurance benefits which
16 are overdue. The attorney's fee shall be a charge
17 against the insurer in addition to the benefits
18 recovered, if the court finds that the insurer unrea-
19 sonably refused to pay the claim or unreasonably delayed
20 in making proper payment.

21 (b) Insurer's attorney. Within the discretion of
22 a court, an insurer may be allowed an award of a
23 reasonable sum against a claimant as an attorney's fee
24 for the insurer's attorney in defense against a claim
25 that was in some respect fraudulent or so excessive as
26 to have no reasonable foundation. To the extent that
27 any personal or property protection insurance benefits
28 are then due or thereafter come due to the claimant
29 because of loss resulting from the injury on which the
30 claim is based, such a fee may be treated as an offset

T-kr

1 against such benefits; also, judgment may be entered
2 against the claimant for any amount of a fee awarded
3 against him and not offset in this way or otherwise
4 paid.

5 Section 8. Examination, treatment and rehabili-
6 tation of injured persons; discovery.

7 (1) Mental and physical examination of injured
8 person. Whenever the mental or physical condition of a
9 person is material to any claim that has been or may be
10 made for past or future personal protection insurance
11 benefits, the person shall submit to mental or physical
12 examination by a physician or physicians. Personal
13 protection insurers are authorized to include reasonable
14 provisions in personal protection insurance policies for
15 mental and physical examination of those claiming
16 personal protection insurance benefits.

17 (2) Reports. If requested by the person examined,
18 a party causing an examination to be made shall deliver
19 to him a copy of every written report concerning the
20 examination rendered by an examining physician, at least
21 one (1) of which reports must set out his findings and
22 conclusions in detail. After such request and delivery,
23 the party causing the examination to be made is entitled
24 upon request to receive from the person examined every
25 written report available to him (or his representative)
26 concerning any examination, previously or thereafter
27 made, of the same mental or physical condition. By
28 requesting and obtaining a report of the examination so
29 ordered or by taking the deposition of the examiner,
30 the person examined waives any privilege he may have,

T-kr

1 in relation to the claim for benefits, regarding the
2 testimony of every other person who has examined or
3 may thereafter examine him in respect of the same
4 mental or physical condition.

5 (3) Sanctions. A court may make such orders in
6 regard to the refusal to comply with subsections 8(1)
7 and 8(2) as are just, except that no order shall be
8 entered directing the arrest of any person for disobeying
9 an order to submit to a physical or mental examination.
10 The orders that may be made in regard to such a refusal
11 include, but are not limited to, the following: (a)
12 an order that the mental or physical condition of the
13 disobedient person shall be taken to be established
14 for the purposes of the claim in accordance with the
15 contention of the party obtaining the order; (b) an
16 order refusing to allow the disobedient person to support
17 or oppose designated claims or defenses, or prohibiting
18 him from introducing evidence of mental or physical
19 condition; (c) an order rendering judgment by default
20 against the disobedient person as to his entire claim or
21 a designated part of it; (d) an order requiring the
22 disobedient person to reimburse the insurer for
23 reasonable attorneys' fees and expenses incurred in
24 defense against the claim; (e) an order requiring
25 delivery of a report, in conformity with subsection 8(2),
26 on such terms as are just, and if a physician fails or
27 refuses to make such report a court may exclude his
28 testimony if offered at trial.

29 (4) Authorization for rehabilitative treatment or
30 occupational training; cost of treatment or training.

T-kr

1 The insurer, whose policy is applicable to the
2 accidental bodily injury, may propose and is responsible
3 for rehabilitation procedures or treatment, and
4 rehabilitative occupational training for the injured
5 person. Any such procedures, treatment or course of
6 rehabilitation must meet the following standards:

- 7 (a) any specified procedure or treatment, whether
8 or not involving surgery, must be recognized and
9 medically accepted;
- 10 (b) any specified course of occupational training
11 must be a recognized form of training and be reasonable
12 and appropriate for the particular case;
- 13 (c) any specified procedure, treatment or training
14 must contribute substantially to rehabilitation;
- 15 (d) the cost of such procedure, treatment or
16 training must be reasonable in relation to its probable
17 rehabilitative effects.

18 (5) Order concerning injured person's refusal of
19 rehabilitative treatment or occupational training.

20 (a) Basis for order. After a hearing upon application
21 by any interested person and reasonable notice to all
22 other interested persons, and upon findings, supported
23 by evidence, as stated in subsection 8(4) and further
24 findings; that the injured person has refused or has
25 by his conduct caused the insurer reasonably to believe
26 that he may refuse to submit to such procedure, treatment,
27 or training, and, that he does not have reasonable
28 grounds to continue such refusal, a court may enter
29 an order invoking reasonable sanctions against the
30 injured person and others whose claims are based on his

T-kr

1 accidental bodily injury.

2 (b) Reasonable grounds for injured person's
3 refusal. In determining whether an injured person has
4 reasonable grounds for continuing refusal to submit to
5 the specified procedure, treatment, or training, the
6 court shall take into account, among all other relevant
7 factors, the extent of the probable benefit, the
8 attendant risks, the extent to which the procedure,
9 treatment, or training is or is not recognized as
10 standard and customary, and whether the imposition of
11 sanctions because of the injured person's refusal would
12 abridge his right to the free exercise of his religion.

13 (c) Sanctions. The sanctions that may be invoked
14 in such an order include, but are not limited to, the
15 following: (i) an order that personal protection
16 insurance benefits be reduced or terminated at such time
17 as necessary to limit recovery of benefits to an
18 amount equal to the benefits that in reasonable proba-
19 bility would have been due had the injured person
20 submitted to such rehabilitative procedure, treatment, or
21 training; (ii) an order that the physical or mental
22 condition of the injured person shall be taken to be
23 established for the purposes of the claim in accordance
24 with the contention of the insurer; (iii) an order that,
25 if the insurer elects to pay a specified lump sum (found
26 to be fair and reasonable compensation in lieu of
27 benefits that in reasonable probability would be due if
28 the injured person submitted to the specified procedure,
29 treatment, or training), it shall be fully discharged
30 from all liability arising from the accidental bodily

T-kr

1 injury.

2 (6) Charges for treatment of injured persons. Any
3 physician, hospital, clinic, or other person or
4 institution lawfully rendering treatment to an injured
5 person for an accidental bodily injury covered by personal
6 protection insurance, and any person or institution
7 providing rehabilitative occupational training following
8 such an injury, may charge a reasonable amount for the
9 products, services, and accommodations rendered. In
10 no event, however, may such a charge be in excess of the
11 amount the person or institution customarily charges
12 for like products, services, and accommodations in
13 cases involving no insurance.

14 (7) Discovery of facts about an injured person.

15 (a) From injured person's employer. Every employer
16 shall, if a request is made by a personal protection
17 insurer against whom a claim has been made, furnish
18 forthwith, in a form approved by the commissioner of
19 insurance, a sworn statement of the earnings since the
20 time of the accidental bodily injury and for a reasonable
21 period before the injury, of the person upon whose
22 injury the claim is based.

23 (b) From physicians, hospitals, clinics, and other
24 medical institutions. Every physician, hospital, clinic,
25 or other medical institutions providing, before or after
26 an accidental bodily injury upon which a claim for
27 personal protection insurance benefits is based, any
28 products, services, or accommodations in relation to that
29 or any other injury, or in relation to a condition
30 claimed to be connected with that or any other injury,

T-kr

1 shall, if requested to do so by the insurer against
2 whom the claim has been made; furnish forthwith a written
3 report of the history, condition, treatment, and dates
4 and costs of such treatment of the injured person and;
5 produce forthwith and permit the inspection and copying
6 of his or its records regarding such history, condition,
7 treatment, and dates and costs of treatment.

8 (c) Disputes as to rights of discovery. In the
9 event of any dispute regarding an insurer's right to
10 discovery of facts about an injured person's earnings or
11 about his history, condition, treatment, and dates and
12 costs of such treatment, a court may enter an order
13 for such discovery. The order may be made only on motion
14 for good cause shown and upon notice to all persons
15 having an interest, and it shall specify the time, place,
16 manner, conditions, and scope of the discovery. A
17 court may, in order to protect against annoyance, embar-
18 rassment, or oppression, as justice requires, enter an
19 order refusing discovery or specifying conditions of
20 discovery and may order payments of costs and expenses
21 of the proceeding, including reasonable fees for the
22 appearance of attorneys at the proceedings, as justice
23 requires.

24 Section 9. Authority, obligations and elections of
25 insurers.

26 (1) Motor vehicle liability insurers authorized to
27 write personal and property protection and residual
28 liability insurance. Every insurer licensed to write
29 motor vehicle liability insurance in this state is
30 authorized to offer personal and property protection

T-kr

1 insurance and residual liability insurance as described
2 in this chapter.

3 (2) Motor vehicle damage insurance. If the
4 insured so elects, the insurer writing personal and
5 property protection insurance shall also provide
6 insurance for accidental loss of or damage to motor
7 vehicles owned by the insured, regardless of fault,
8 subject to any deductible stated on the face of the
9 policy and to a limit not less than the actual cash
10 value of the vehicle, and subject to any exclusion as
11 to damage caused otherwise than by collision or upset.

12 (3) Added protection insurance. If the insured
13 so elects, the insurer writing personal and property
14 protection insurance may also provide added protection
15 insurance; insuring against all or part of any amount
16 of loss that would be excluded by the limits on
17 hospital charges, funeral and burial expenses and monthly
18 work loss set forth in subsection 3(2) or, indemnifying
19 according to a reasonable schedule for a permanent
20 loss of fifty percent (50%) or more of the functions of
21 a vital part of the body or a substantial and permanent
22 disfigurement.

23 (4) Insurer's certification to subject out-of-state
24 policies to the personal and property protection system
25 for in-state injuries and property damage. (a) Admitted
26 insurers required to make certification. Every insurer
27 licensed to write motor vehicle liability insurance and
28 personal and property protection insurance in this state
29 is required to file and maintain a written certification
30 that any accidental bodily injury or property damage

T-kr

1 occurring in this state arising from the ownership,
2 operation, maintenance or use of a motor vehicle as a
3 motor vehicle by out-of-state residents who are insured
4 under its motor vehicle liability insurance policies,
5 shall be subject to the personal and property protection
6 insurance system set forth in this chapter.

7 (b) Non-admitted insurer's certification. Any
8 non-admitted insurer may voluntarily file the
9 certification described in subsection (a).

10 (c) Effect of certification. When a certification
11 filed under subsection (a) or (b) applies to accidental
12 bodily injury or property damage, the insurer and its
13 insureds with respect to that injury or damage have all
14 the rights and immunities under this act for personal
15 and property protection insureds, and claimants have
16 all the rights and benefits of personal and property
17 protection insurance claimants, including the right
18 to receive benefits from the electing insurer as if
19 it were an insurer of personal and property protection
20 insurance applicable to the accidental bodily injury
21 or property damage.

22 (5) Rates and classifications. Rates and
23 classifications for personal and property protection
24 insurance, including added protection coverage, shall
25 be subject to the law regulating casualty insurance
26 rates in this state.

27 Section 10. Assigned claims plan.

28 (1) Organization and maintenance of an assigned
29 claims bureau and plan. Insurers authorized to write
30 personal protection insurance in this state are

T-kr

1 authorized, subject to approval and regulation by the
2 commissioner of insurance, to organize and maintain an
3 assigned claims bureau and an assigned claims plan,
4 and to formulate and from time to time amend rules
5 and regulations for their operations and the assessment
6 of costs on a fair and equitable basis consistent with
7 the provisions of this chapter. In default of the
8 organization and continued maintenance of an assigned
9 claims bureau and assigned claims plan, the commissioner
10 of insurance shall organize and maintain such a bureau
11 and plan.

12 (2) Insurers required to participate. Every
13 insurer writing personal protection insurance in this
14 state is required to participate in the assigned claims
15 bureau and the assigned claims plan.

16 (3) Persons entitled to claim through the assigned
17 claims plan; benefits to which entitled. (a) Any person
18 entitled to claim because of accidental bodily injury
19 arising out of the ownership, operation, maintenance or
20 use of a motor vehicle as a motor vehicle in this state
21 may obtain personal protection insurance benefits through
22 the assigned claims plan established pursuant to this
23 chapter if; no personal protection insurance is applicable
24 to the injury, or; no personal protection insurance
25 applicable to the injury can be identified, or; the only
26 identifiable personal protection insurance applicable
27 to the injury is, because of financial inability of
28 one or more insurers to fulfill their obligations,
29 inadequate to provide benefits up to the maximum
30 prescribed (in which last case all unpaid benefits due

T-kr

1 or coming due are subject to being collected under the
2 assigned claims plan, and the insurer to which the claim
3 is assigned, or the bureau of assigned claims if the
4 claim is assigned to it, is entitled to reimbursement
5 from the defaulting insurers to the extent of their
6 financial responsibility).

7 (b) A person who because of a limitation or
8 exclusion in section 3 is disqualified from receiving
9 personal protection insurance benefits under a policy
10 otherwise applying to his accidental bodily injury is
11 also disqualified from receiving benefits under the
12 assigned claims plan.

13 (4) Claimant to notify bureau for assignment of
14 his claim. A person claiming through the assigned
15 claims plan shall notify the bureau of his claim
16 within the time that would have been allowed for filing
17 an action for personal protection insurance benefits had
18 there been in effect identifiable coverage applicable
19 to the claim. The bureau shall promptly assign the
20 claim in accordance with the plan and notify the
21 claimant of the identity and address of the insurer to
22 which the claim is assigned (or of the bureau if the
23 claim is assigned to it). No action by the claimant
24 shall be commenced later than thirty (30) days after
25 receipt of notice of the assignment or the last date on
26 which the action could have been commenced against an
27 insurer of identifiable coverage applicable to the
28 claim, whichever is later.

29 (5) Principle of assignment. The assignment of
30 claims shall be made according to rules and regulations

T-kr

1 that assure fair allocation of the burden of assigned
2 claims among insurers doing business in the state on
3 a basis reasonably related to the volume of personal
4 protection insurance they write. Insurers to whom
5 claims have been assigned shall make prompt payment
6 of loss in accordance with the terms of this act and
7 shall thereupon be entitled to reimbursement by the
8 bureau for such payments and the established loss
9 adjustment cost. The insurer to whom a claim is
10 assigned shall preserve and enforce all rights to
11 indemnity or reimbursement against third parties and
12 account to the assigned claims bureau therefor.

13 (6) Costs of operation of the assigned claim
14 bureau. Losses paid, the cost of adjusting such losses
15 and costs incurred in the operation of the bureau shall
16 be assessed against insurers according to rules and
17 regulations that assure fair allocation among insurers
18 writing personal protection insurance in the state, on
19 a basis reasonably related to the volume of personal
20 protection insurance they write.

21 (7) Costs of assigned claims plan to affect
22 premiums. All reasonable costs incurred in the handling
23 and disposition of assigned claims (including amounts
24 paid pursuant to assessments under subsection 10(6)
25 shall be taken into account in making and regulating
26 rates for personal protection insurance.

27 (8) Rights against uninsured motor vehicle owners
28 or registrants. The insurer obligated to pay personal
29 protection insurance benefits for accidental bodily
30 injury to a person occupying an uninsured motor vehicle

T-kr

1 or to the spouse or relative resident in the household
2 of the owner or registrant of an uninsured motor vehicle
3 shall be entitled to recover all such benefits paid and
4 appropriate loss adjustment costs incurred from the owner
5 or registrant of the uninsured motor vehicle or from
6 his estate. The failure of such person to make payment
7 within thirty (30) days shall be grounds for suspension
8 or revocation of his motor vehicle registration and
9 operator's license. An uninsured motor vehicle for
10 the purpose of this subsection is a motor vehicle with
11 respect to which no security as required by section
12 2 of this act is in effect at the time of the accident.

13 Section 11. Severability and constitutionality.
14 If any provisions of this chapter or the application
15 thereof to any person or circumstance is held
16 unconstitutional, the remainder of this chapter and the
17 application of such provision to other persons or
18 circumstances shall not be affected thereby, and it
19 shall be conclusively presumed that the legislature
20 would have enacted the remainder of this chapter
21 without such invalid or unconstitutional provision.

22 Section 12. Effective date. This act shall
23 take effect with respect to motor vehicle accidents
24 occurring on or after July 1, 1972, and all acts and
25 parts of acts inconsistent herewith shall thereupon
26 be repealed.

27

28

29

30

February 5, 1971

JUDICIARY COMMITTEE

The meeting was called to order in room 300 of the Capitol Building on Friday, February 5, at 9 a.m. with Chairman Jeffrey J. Scott presiding. All members were present except Mr. Warfield and Mr. Zimmer.

HOUSE BILL 435

Representative Harrison gave an explanation of this bill which would provide that contributory negligence shall not be a bar to recovery of damages and that the jury may diminish damages. Mr. Wade Dahood, representing the Montana Trial Lawyers' Association, gave a statement in support of this bill. Chadwick Smith, representing the American Mutual Alliance, opposed this particular bill. Mr. John Risken gave a statement opposing this bill. There were no further witnesses, questions were asked and the hearing on this bill was closed.

HOUSE BILL 436

Representative Harrison explained the contents of this bill which would provide for a jury trial upon questions of fact of disability, amending section 92-822. Mr. Wade Dahood gave testimony in support of this bill. There were no further witnesses and no questions were asked.

HOUSE BILLS 512, 514, 516 Representative Harrison explained these bills, which would raise the limit of liability for bodily injury to \$25,000/\$50,000 for minimum proof of financial responsibility. Mr. Wade Dahood gave testimony in support of these bills. Mr. Chad Smith, representing the American Mutual Insurance Alliance, gave a statement in opposition but he felt they could agree to increase this to \$15,000/\$30,000. Mr. John Risken also spoke in opposition to this bill as far as the limits were concerned. There were no further witnesses. Questions were asked and the hearing was closed.

HOUSE BILL 515

There were no sponsors present and no witnesses.

HOUSE BILL 451

Representative Fagg gave an explanation of this bill, which would provide for personal and property protection motor vehicle insurance with benefits payable without regard to fault. He introduced Mr. W. Victor Slevin, from San Francisco, California, representing the American Insurance Association. Mr. Slevin gave a detailed statement explaining the contents of this bill. Mr. Wade Dahood representing the Montana Trial Lawyer's Association, spoke in opposition to this bill. Mr. Chad Smith, representing American Mutual Insurance Alliance, and Tom Harrison spoke in opposition to this bill. Questions were asked and the hearing on this bill was closed.

HOUSE JOINT RESOLUTION

29

Representative Fagg gave an explanation of this resolution which, in the event, HB 451 does not pass, would request that the legislative council conduct a study of the feasibility of adopting a no fault motor vehicle insurance plan and report its findings to the 43rd Legislative Assembly. Mr. Slevin representing the American Insurance Association, gave a statement in support of this resolution. Mr. Tom Maddox, representing the Association of Independent Insurance Adjusters, gave a statement in support of this resolution. Mr. Chad Smith appeared in opposition to this resolution. Mr. Wade Dahood spoke in opposition. There were no further witnesses and the hearing on this bill was closed.

EXECUTIVE SESSION

HOUSE BILL 486

Mr. Mather moved that House Bill 486 do pass. A motion was made that House Bill 486 DO NOT PASS. Motion carried.

HOUSE BILL 510

Mr. McNamer moved to amend the bill on line 13 after the word "shall" by striking the material "also offer to provide for" and inserting in lieu thereof the material "require the debtor to secure". Motion carried. Mr. Mather moved to amend by striking section 2 in its entirety. Motion carried. Mr. McNamer made a motion that the bill do pass as amended. Mr. Towe made a substitute motion that on line 19 after the word "liability" the words "and property damage" be stricken. Motion carried. A motion was made that House Bill 510 DO PASS AS AMENDED. Motion carried.

HOUSE BILL 497

Mr. Towe proposed several amendments. (See Standing Committee Report). A motion was made that the amendments be adopted. Motion carried. Mr. Hall moved to amend in section 2, subsection (b) after the word "years" by inserting the material "over whom the juvenile court may have jurisdiction under section 10-603, R.C.M., 1947, and". This motion carried. Mr. Towe moved that House Bill 497 DO PASS AS AMENDED. Motion carried.

HOUSE BILL 451

A motion was made that House Bill 451 DO NOT PASS. Motion carried.

HOUSE JOINT RESOLUTION

29

A motion was made that House Joint Resolution 29 do pass. Motion was made that the bill be amended on line 29, page 1, after the material "ways--" by striking the material "tort system and other," and on line 30 after the word "Montana," by striking the word "other" and further amended on page 2, line 1 through 3 by striking the material "states, Canada and other countries, together with trends for more stringent operators' licensing requirements in all states and countries," and as so AMENDED DO PASS. Motion carried.

NAME W. VICTOR SHEVIN

BILL NO. 451

ADDRESS 465 CALIFORNIA ST

DATE 2-5-71

SAN FRANCISCO, CALIF., 94104

WHOM DO YOU REPRESENT? AMERICAN INSURANCE ASS'N.

SUPPORT?



OPPOSE?

AMEND?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HARRI

RISKEN

BILL NO. 451

ADDRESS

DATE 2-5-71

WHOM DO YOU REPRESENT?

Am. Bus. Assn.

SUPPORT?

X

OPPOSE?

AMEND?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME: Roy C. KIMMEL

BILL No. 737

ADDRESS: 1675

DATE: 2/10/67

Helenor Mabel

WHOM DO YOU REPRESENT? Fireman's Fund Insurance Co.

SUPPORT?

OPPOSE?

X AMEND?

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.